

Central Administrative Tribunal  
Jodhpur Bench, Jodhpur

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Date of Order: 21.2.2003

O.A. No. 72/2002

Mohan S/o Shri Magna aged about 50 years, resident of at Chhuriya Nagar, Nayo Ka Kua, PO Marwar Junction, Via Kharsi, Distt. Pali, at present employed on the post of Gateman on Gate No. 59 'C' under the PWI Marwar, Western Railway.

..... Applicant.

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Assistant Engineer, Sojat Road, Western Railway, Ajmer Division, Ajmer.
4. Mangilal (R.G. Gateman), at Bata Raghunath Garh, under CPWI Sojat Road, Western Railway.

..... Respondents.

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CORAM :

Hon'ble Mr. J.K. Kaushik, Judicial Member

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Mr. B. Khan, counsel for the applicant.

Mr. Salil Trivedi, counsel for the respondents.



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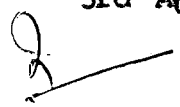
O R D E R

BY THE COURT :

Shri Mohan has assailed the impugned order dated 11th January, 2002 (Annex.A/1) vide which he has been ordered to be transferred from the post of Gateman, Gate No. 59, Marwar Junction to Rest Giver (RG) Gateman (RGK-BGG). He has also prayed that he should not be transferred except on the post of a permanent Gateman.

2. The material facts giving rise to the controversy involved in this application are that applicant, who belongs to a Scheduled Caste category, was initially engaged as a Casual Labour and confirmed w.e.f. 21st Oct., 1976. He was allowed promotion as Gangman w.e.f. 17th June, 1983. Though, he was posted as Gangman but he was utilised as a Gateman as a relief giver for about ten years inspite of the fact that he passed in medical A-III category which is ment for the post of Gateman. He was faced with certain peculiar problems and he submitted a representation dated 4.5.1991 (Annex.A/2) for posting him as a permanent Gateman and his name was noted in the name noting register for posting him as a Gateman.

3. The further case of the applicant is that a post of Gateman fell vacant at Gate No. 59 'C' and he was ordered to be posted on that post vide order dated 3rd Aug., 1999 on his own request. This posting was on



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name noting position and there was no one else waiting posting against the said post. The applicant immediately joined at Gate No. 59 'C' after getting relieved from Gang No. 7. Thereafter, he continued to discharge his duties without any complaint and after two and a half years, an order dated 11th Jan., 2002 was passed by which the applicant has been ordered to be transferred from this gate at Marwar Junction to Banta Raghunathgarh and his transfer has been said to be in public interest. It has been stated that the private respondent No.4 Shri Mangilal, has been transferred vice him though such respondent is junior to him and never got his name noted for the post of Gateman. A representation was immediately made on 28th January, 2002 followed by another one, through the Trade Union apprising grave illegality in the matter. He has submitted that he has got three school going children and also belongs to SC category for which special provisions has been made to post them nearer to home-town. There has been no response to the representations.

4. The O.A. has been filed on multiple grounds i.e. the impugned order is ex facie illegal and without jurisdiction and does not contain any valid or cogent reason, the applicant is senior to respondent No.4 and is in higher grade, he is also due for promotion as Keyman, he was transferred on name-nothing basis and there is no complaint against him etc.

5. The respondents have contested the case and have filed a detailed counter to the O.A. denying that applicant has ever worked on the post of Gateman prior to the order dated 3rd Aug., 1999. As per procedure being

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followed for posting a permanent Gateman, it is from RG Gateman and applicant being in the category of Gangman, cannot be said to be eligible to work as permanent Gateman. It was by mistake that applicant was posted directly from Gangman to a Gateman in 1999 and that he is not senior to the respondent No.4. The further ground of defence of the respondents is that the representation dated 4.5.1991 at Annex. A/2 was never received in the office of the respondents. The trade union of the department also raised an objection regarding return posting in case of applicant. It is also incorrect that in the name noting register, ~~the~~ none other person's name was noted but, as a matter of fact, the name of respondent No. 4 was also available for his posting as a regular Gateman. It is contended that respondent No. 4 has already been joined at Gate No. 59 'C' even before filing of this OA, thus, no relief can be given to the applicant herein. The applicant was offered the relieving order but he refused to take the same and reported sick. Thus, the OA has no merit and the same deserves dismissal.

6. A rejoinder has been filed on behalf of the applicant and certain documents have been filed wherein, it has been indicated that applicant was working on the post of Gateman and there was no complaint against him. A reply to rejoinder has also been filed and as per the provisions in force it is absolutely unwarranted. inasmuch as it does not contain or accompany any ~~specific~~ reason except reiterating what has already been ~~averred~~ in the detailed reply. What was the special circumstances

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that necessity arose to take recourse to such pleadings, which is not contemplated under the rules, is not indicated.

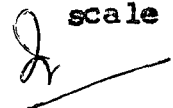
7. This Tribunal, vide its proceeding dated 11th Nov., 2002, directed the respondents to keep the relevant rules, circular and the procedure for posting of Gateman ready for perusal of this Tribunal. Thereafter, number of adjournments were taken for the purpose but it has not been found expedient and convenient to the respondent-department to produce the same. The learned counsel has also not given any reason for not making available the said information and plainly ~~that~~ shown his inability to make available the same except the name noting register in respect of the post of Gateman which was hesitantly shown.

8. The learned counsel for the parties consented that the case be heard for final disposal at the admission stage.

9. I have heard the learned counsel for the parties at considerable length and have carefully perused the pleadings and the record of the case.

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10. Both the/counsel have reiterated the facts and grounds taken in their pleadings. The learned counsel for applicant has submitted that the post of Gateman is filled-in from amongst the Gangmen who should have passed the medical category A-III. Both these posts carry equal scale of pay and the post of Gateman is filled as per



option. The option submitted by the applicant vide Annexure A/2 was accepted and he was allowed on request transfer as per name noting register as is evident from the very order at Annexure A/3, which he immediately carried-out and continued to work at Gate No. 59 'C' for a period of 2 and a half years without any interruption. On the contrary, the learned counsel for respondents has argued that as per rules in force, the Gateman is first required to be posted as RG Gateman and then only, he can be given posting as a permanent Gateman. But, in case of applicant, he was wrongly posted as Regular Gateman and in fact it was respondent No. 4 who ought to have been posted at the said gate and with the impugned order, the mistake has been ordered to be corrected. He also submitted that respondent No. 4 also got his name noted for posting at Gate No. 59 'C'. The learned counsel for respondents was specifically paused with the question<sup>that</sup> as to what was the channel of promotion from Gangman to Gateman, he was at difficulty to answer the same and could not even point-out as to which rule governs the matter. He only reiterated the stand of the respondents that as per the practice being followed, a person is first required to be posted as RG Gateman. A Gangman cannot be directed posted as Gateman on regular basis.

11. I have considered the rival contentions on the aforesaid issue. At the very out-set, taking a judicial notice of various channels of promotions in the Railways, one thing is clear that there is no post like a Relief-Giver in any of the channel or any of promotion. As is understood in common parlance, rest giver is provided an extra cadre

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post where the employees are required to work in shifts round the clock. It is necessary to provide extra manpower so that during their rest time such extra persons can filled-up the gap. Similarly, there are provisions for leave reserve which cannotes extra man-power required to work in absence of employees who go on leave. These are only arrangements to meet with certain specific contingencies and as such, there is no post like leave reserve or rest giver in any cadre. As far as the incumbent who should be utilised as LG or RG, such persons should have sufficient experience so that they can work in different sets of circumstances since they are required for giving rest to different employees or to work in absence of other employees. In this view of the matter, it is irrational to introduce an extra channel like RG or LG in the normal avenue of promotion. Thus, the contention of the respondents is wholly untenable.

12. It is seen from the Name-Noting Register that name of the applicant has been placed at Sl. No. 1 and date of application is 20.9.1991. On the other hand, name of respondent No. 4, has been placed at Sl.No.16, his date of application being 13.11.1996.

At the very out-set, it can be said that applicant was in senior position as far as the name noting is concerned and it is not the case of respondents that name noting register has no legal sanctity or it has been wrongly prepared. As regards posting of persons from Gangman directly to the post of regular Gateman, this



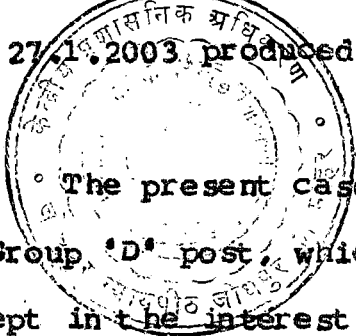
position is evident from item Sl. Nos. 13, 21, 22, 23, 25, 27, 28, 41, 44, 45, 46, 47 etc. that the similarly situated Gangmen have been directly transferred <sup>/promoted</sup> as Gatemen without posting them as RG Gatemen or IR Gatemen. Thus, the contention of the learned counsel for respondents that Gangman cannot be directly posted as Gateman, is totally belied and contrary to their own records, therefore, it cannot be said that respondents had issued the impugned order in rectifying their mistake. The very substratum of the impugned order is shaken and the respondents cannot climb with the help of rope of sand.

13. The learned counsel for the respondents has submitted that in addition to what has been narrated above, applicant has already served for two and a half years and otherwise also, he could be transferred in the interest of administration and transfer is an incident of service and should not be lightly interfered with by the Courts as has been the consistent view of the Apex Court. The learned counsel for the applicant has repelled this contention and has submitted that in the present case, the applicant has been ordered to be transferred due to extraneous reasons inasmuch as it has been said that earlier he was posted against name noting by mistake and the respondents cannot be allowed to blow hot and cold together. There has to be transparency and predictability in administration. One side they have transferred the applicant as per his position in the name noting register and number of other Gangman situated similarly have also been allowed such transfers but, now at the



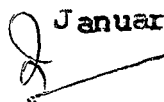
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instance of trade union, the applicant is being made victim of an incidious discrimination. This Tribunal is well conscious and aware of the statement of law in the matters of transfers and I have also taken into consideration the two judgements in O.A. No. 137/2002 - Gopi Lal Versus Union of India and Others decided on 11.09.2002 and in O.As No. 79, 80 and 81 of 2002 - Chhotu Ram and Others Versus Union of India and Others decided on 27.1.2003, produced on behalf of respondents.



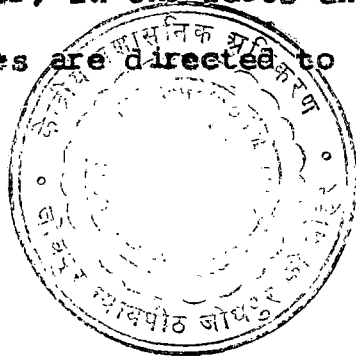
The present case is of a Scheduled Caste category of Group 'D' post, which are not to be normally transferred except in the interest of administration and in the case in hand, there was no interest of administration to transfer the applicant. It is a case, ex facie of accommodating the respondent No.4 that too for extraneous reasons and the applicant has been ordered to be ousted to make a room for him. The Courts are not power less to undo the wrong and put a check on the arbitrary action of the State. Since the arbitrariness is antithesis to the equality and right to equality has been guaranteed under Article 14 of the Constitution. In this view of the matter, there is ample force in the O.A. and I am of ~~my~~ firm opinion that the impugned order is illegal, arbitrary and in-operative and is against the frown of Article 14 of the Constitution of India.

14. In view of fore-going discussions, inescapable conclusion is that O.A. deserves to be allowed and the same is hereby allowed. The impugned order dated 11th January, 2002 (Annex.A/1), is hereby quashed and the



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applicant shall be entitled with all consequential benefits as if the impugned order was never in existence. However, in the facts and circumstances of the case, the parties are directed to bear their own costs.



*J. K. Kaushik*  
( J. K. KAUSHIK )  
Judicial Member

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